September 1, 2021

VIA ECF

Hon. Michael A. Shipp, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: ***In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, Master No. 15-cv-7658-MAS-LHG Securities Direct Actions**

Dear Judge Shipp:

The undersigned firms represent the opt-out plaintiffs in the more-than-twenty securities fraud actions (the "Direct Action Plaintiffs" to the "Direct Actions") against Valeant Pharmaceuticals International, Inc. (n/k/a Bausch Health Companies Inc.) ("Valeant").[1] On July 27, 2021, the Direct Action Plaintiffs filed a letter with the Court seeking a trial date in mid-2022. We shared our concern that Valeant was exploiting the Court's congested docket to delay the Direct Actions while divesting itself of valuable assets. (ECF No. 800.) We also provided evidence that Valeant's CEO was downplaying the amount of its potential legal exposure to the Direct Action Plaintiffs and, therefore, the significance of that potential liability to an over-levered "RemainCo" that will be left after Valeant's anticipated spin-off of its profitable eyecare business. We have raised this issue now because although Valeant announced its plans for the spin-off more than a year ago, it has only been in the past weeks that Valeant has disclosed that RemainCo will be almost three times more levered than the spun-off entity.

Subsequent events have substantially heightened our concerns and the urgent need to set a prompt trial date. On August 3, 2021, Valeant held its second quarter earnings call, during which an equity analyst from a major investment bank asked Valeant about its more-than-$3 billion contingent liability to the Direct Action Plaintiffs. In response, Valeant's CEO, Joseph Papa, (i) repeatedly told analysts that the Direct Action Plaintiffs' letter to this Court contained "misrepresentations" about the nature and extent of the Direct Action claims, and (ii) confirmed that the new, spun-off entity is seeking to evade any liabilities arising from the Direct Actions. Here is the relevant question and answer:

> Q – [Barclays Analyst]:
>
> Just a follow-up also on – yes, on the recent headlines around the $3 billion claim and the implications for the spin-off, both Bausch & Lomb and Solta?
>
> A - Joseph C. Papa:

[1] The Direct Action Plaintiffs are parties to the following cases: 16-cv-07321; 16-cv-07324; 16-cv-07494; 16-cv-07496; 17-cv-06513; 17-cv-07636; 17-cv-12088; 18-cv-00089; 18-cv-00343; 18-cv-00383; 18-cv-00846; 18-cv-00893; 18-cv-01223; 18-cv-08595; 18-cv-08705; 18-cv-15286; 18-cv-17393; 20-cv-02190; 20-cv-05478; 20-cv-07460; and 20-cv-07462.

> Yes. We obviously have seen it. We don't agree with the – we think there's some mischaracterizations and ***misrepresentations by the plaintiffs in terms of that claim against us*** in terms of the recent Bloomberg story. ***We believe that the Bausch & Lomb spin-off has <u>no connection</u> to the pending litigation***, and we think that we announced the B&L spin-off going back now a year ago. So we don't think there's any misrepresentation. ***We think they've made misrepresentations***. We think we're going to be able to continue to move forward with our programs.
>
> And ***we don't think there's any legal basis for the concerns raised by the plaintiffs***. And we believe it is merely a litigation tactic that they are employing to go forward with this. We obviously have already settled with the class. And we believe that we've taken care of certainly the majority of this. And ***to suggest that $3 billion number***, we'll just leave that for them to try to rationalize why they suggest that. But ***we certainly think misrepresentation, mischaracterizations of what they've stated.***

(Ex. A at 14 (emphasis added).)

The Direct Action Plaintiffs made no "misrepresentations" to the Court, and the concerns Plaintiffs raised in their July 27, 2021 letter are valid. In that letter, the Direct Action Plaintiffs asserted that they had over $3 billion in losses as calculated under the class settlement model that this Court approved. That is not only demonstrably true, but counsel for Valeant recently confirmed the accuracy of that figure during a status conference before Judge Cavanaugh. (Ex. B at 20:14-21 ("***Plaintiffs' $3 billion value or damages estimate comes from using a recognized loss figure in the class plaintiffs' settlement*** that expressly disclaims that it can't be used for this purpose and it's only for the purpose of [divvying] up money between plaintiffs who opted into the class." (emphasis added).) In fact, running the applicable common stock trading data for the claims made by just the largest five Direct Actions through the table used in the Court-approved plan of allocation for the Class Action results in damages for those plaintiffs of over $3 billion under Section 10(b) of the Securities Exchange Act of 1934. This number does not take into account prejudgment interest, bonds or option purchases, and does not include the claims asserted by the other sixteen Direct Actions. Thus, the Direct Action Plaintiffs were neither misrepresenting nor mischaracterizing when they wrote that they have over $3 billion in losses under the class settlement model.

Nor did the Direct Action Plaintiffs engage in a "litigation tactic" when they expressed concern that the contemplated spin-off could negatively impact their ability to collect on the judgments they are pursuing in these litigations. The Direct Action Plaintiffs have requested very basic information from Valeant regarding the planned spin-off, including an identification of which entity will hold the contingent liability related to the Direct Actions after the spin-off. However, Valeant has refused to disclose where the multi-billion-dollar contingent liability relating to the Direct Actions will be carried post-transaction, and Valeant denied our request for supporting data to confirm that the entity that will carry that contingent liability on its balance sheet will have

sufficient assets and liquidity to pay potential judgments in the range reasonably expected by the Direct Action Plaintiffs. If the Direct Action Plaintiffs' concerns were unfounded, the simple solution would have been to provide the requested information. Valeant's refusal to do so only heightens our concerns.[2]

Further, on August 3, 2021, Valeant announced that Bausch Pharma (RemainCo) will be led by two current non-chief executives at Valeant: Thomas Appio and Robert Spurr. While these new leaders are current heads of two of Valeant's business units, they are not responsible for certifying the accuracy of Valeant's company-wide financial reporting and public disclosures. The current CEO and CFO – who have intimate knowledge of the impending leverage inequality and which entity will be responsible for our claims – are apparently jumping ship to run the asset-rich spin-off. This further suggests that the spin-off will impede the Direct Action Plaintiffs' ability to recover on their eventual judgments.

In light of these developments, the Direct Action Plaintiffs again request that the Court set a trial date to allow these cases – many of which have been pending for several years – to move forward promptly so that any litigation necessary to recover on any judgments can be undertaken as close in time to the spin-off transaction as possible. The Direct Action Plaintiffs have substantially completed fact discovery and expect to be ready for trial by mid-2022. We are also available to participate in a conference to discuss these issues.

Respectfully submitted,

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[2] Valeant claims that it has legitimate bases for not producing this information. The parties recently agreed to a briefing schedule to present their arguments concerning the discovery of this information to Judge Cavanaugh.

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